

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 348

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO THE PUBLIC DEFENDER; CREATING THE PUBLIC DEFENDER
COMMISSION TO OVERSEE THE OPERATION OF THE PUBLIC DEFENDER
DEPARTMENT AS AN ADJUNCT AGENCY AND TO DEVELOP STANDARDS;
MODIFYING THE APPOINTMENT, QUALIFICATIONS AND REMOVAL OF THE
CHIEF PUBLIC DEFENDER; DETACHING THE PUBLIC DEFENDER
DEPARTMENT FROM THE CORRECTIONS DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-15-1 NMSA 1978 (being Laws 1973,
Chapter 156, Section 1) is amended to read:

"31-15-1. SHORT TITLE. -- ~~[This act]~~ Chapter 31, Article
15 NMSA 1978 may be cited as the "Public Defender Act". "

Section 2. Section 31-15-2 NMSA 1978 (being Laws 1973,
Chapter 156, Section 2, as amended) is amended to read:

"31-15-2. DEFINITIONS. -- As used in the Public Defender

1 Act:

2 A. "chief" means the chief public defender;

3 B. "commission" means the public defender
4 commission;

5 ~~[A.]~~ C. "court" means the district, [courts]
6 metropolitan and magistrate courts of this state;

7 ~~[B.]~~ D. "department" means the public defender
8 department;

9 ~~[C.]~~ E. "district" means [the] a public defender
10 district; and

11 ~~[D.]~~ F. "judge" means a judge of the district or
12 metropolitan court or a magistrate [and

13 E. "chief" means the chief public defender]. "

14 Section 3. A new section of the Public Defender Act is
15 enacted to read:

16 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--CREATED--
17 MEMBERSHIP--TERMS--REMOVAL.--

18 A. The "public defender commission" is created and
19 consists of eleven members. Members shall be appointed as
20 follows:

21 (1) the governor shall appoint two members,
22 one of whom shall be a member of an organization that
23 advocates on behalf of persons with mental illness;

24 (2) the chief justice of the supreme court
25 shall appoint two members, one of whom shall be a member of an

1 organization that advocates on behalf of homeless persons;

2 (3) the dean of the university of New Mexico
3 school of law shall appoint two members, one of whom shall be
4 a member of an organization that advocates on behalf of an
5 ethnic minority and one of whom shall be from a county with a
6 population of not more than one hundred twenty thousand
7 persons;

8 (4) the president of the state bar of New
9 Mexico shall appoint one member who shall be from a county
10 with a population of not more than one hundred twenty thousand
11 persons;

12 (5) the speaker of the house of
13 representatives shall appoint one member;

14 (6) the president pro tempore of the senate
15 shall appoint one member;

16 (7) the New Mexico criminal defense lawyers
17 association shall appoint one member; and

18 (8) the juvenile justice advisory committee
19 shall appoint one member.

20 B. Initial appointments to the commission shall be
21 made by August 1, 2009. Initial terms of members appointed by
22 the dean of the university of New Mexico school of law, the
23 New Mexico criminal defense lawyers association and the
24 juvenile justice advisory committee shall be for four years;
25 initial terms of members appointed by the president of the

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underscored material = new
[bracketed material] = delete

1 state bar of New Mexico, speaker of the house of
2 representatives and president pro tempore of the senate shall
3 be for three years; and initial terms of members appointed by
4 the governor and the chief justice of the supreme court shall
5 be for two years.

6 C. Subsequent terms shall be for four years. A
7 commission member shall not serve more than two consecutive
8 terms. A commission member shall serve until the member's
9 successor has been appointed and qualified. A vacancy on the
10 commission shall be filled by the appointing authority for the
11 remainder of the unexpired term.

12 D. A member may be removed by the commission for
13 malfeasance, misfeasance or neglect of duty. If a member's
14 professional status changes to render the member ineligible
15 pursuant to Section 4 of this 2007 act, the member shall
16 resign immediately.

17 E. Members of the commission are entitled to
18 compensation pursuant to the provisions of the Per Diem and
19 Mileage Act and shall receive no other perquisite,
20 compensation or allowance.

21 F. The commission is administratively attached to
22 the department, and staff for the commission shall be provided
23 by the department. "

24 Section 4. A new section of the Public Defender Act is
25 enacted to read:

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1 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--MEMBER 5

2 QUALIFICATIONS. --

3 A. A person appointed to the commission shall
4 have:

5 (1) significant experience in the defense of
6 criminal or juvenile justice cases; or

7 (2) demonstrated a commitment to quality
8 indigent defense representation or to working with and
9 advocating for the population served by the department.

10 B. The following persons shall not be appointed to
11 and shall not serve on the commission:

12 (1) current prosecutors, law enforcement
13 officials or employees of prosecutors or law enforcement
14 officials;

15 (2) current public defenders or other
16 employees of the department;

17 (3) current judges, judicial officials or
18 employees of judges or judicial officials;

19 (4) current elected officials or employees of
20 elected officials; or

21 (5) persons who currently contract with or
22 receive funding from the department or employees of such
23 persons. "

24 Section 5. A new section of the Public Defender Act is
25 enacted to read:

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underscored material = new
[bracketed material] = delete

1 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION--
2 ORGANIZATION-- MEETINGS. --

3 A. The commission shall hold its first meeting by
4 September 1, 2009 and shall organize and elect a chair at that
5 meeting. Thereafter, three or more meetings shall be held
6 annually as determined by a majority of commission members.
7 Meetings shall be held at the call of the chair or the chief
8 or at the request of four commission members.

9 B. A majority of commission members constitutes a
10 quorum for the transaction of business, and an action by the
11 commission is not valid unless six or more members concur.

12 C. The commission may adopt rules and shall keep a
13 record of its proceedings.

14 D. A commission member may select a designee to
15 serve in the member's stead only once per year. "

16 Section 6. A new section of the Public Defender Act is
17 enacted to read:

18 "[NEW MATERIAL] PUBLIC DEFENDER COMMISSION-- POWERS AND
19 DUTIES. --

20 A. The commission shall exercise independent
21 oversight of the department and provide guidance to the chief
22 in the administration of the department and the representation
23 of indigent persons pursuant to the Public Defender Act.

24 B. The commission shall develop fair and
25 consistent standards for the operation of the department and

1 the provision of services pursuant to the Public Defender Act,
2 including standards relating to:

3 (1) the minimum experience, training and
4 qualifications for appointed, contract and staff attorneys in
5 both adult and juvenile cases;

6 (2) monitoring and evaluating appointed,
7 contract and staff attorneys;

8 (3) ethically responsible caseload and
9 workload levels and workload monitoring protocols for staff
10 attorneys, contract attorneys and district defender offices;

11 (4) the competent and efficient
12 representation of clients whose cases present conflicts of
13 interest; and

14 (5) qualifications and performance in capital
15 cases at the trial, appellate and post-conviction levels.

16 C. The commission shall not interfere with the
17 discretion, judgment or advocacy of a public defender office,
18 a public defender contractor or an assigned counsel in the
19 representation of individual cases.

20 D. The commission shall not interfere with the
21 duties of the chief, such as the administration of the
22 department, the allocation and distribution of resources,
23 management of personnel and contracts and other duties set
24 forth in Section 31-15-7 NMSA 1978. "

25 Section 7. Section 31-15-4 NMSA 1978 (being Laws 1973,

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1 Chapter 156, Section 4, as amended) is amended to read:

2 "31-15-4. CHIEF PUBLIC DEFENDER--APPOINTMENT--
3 QUALIFICATIONS--REMOVAL. --

4 A. The [~~governor shall appoint the~~] chief [~~who~~]
5 shall be the administrative head of the department. [~~Any~~] The
6 commission shall appoint a chief for a term of four years by
7 approval of two-thirds of its members. The commission may
8 reappoint a chief for subsequent terms. A vacancy in the
9 office of the chief shall be filled by appointment [~~of~~] by the
10 [~~governor~~] commission.

11 B. The [~~governor~~] commission shall appoint as
12 chief only a person with the following qualifications:

13 (1) an attorney licensed to practice law in
14 the highest court of this state or who will be so licensed
15 within one year of appointment;

16 (2) an attorney whose practice of law has
17 been continuously active for at least [~~five~~] seven years
18 immediately preceding the date of this appointment; [~~and~~]

19 (3) an attorney whose practice of law has
20 clearly demonstrated experience in defense [~~or prosecution~~] of
21 persons accused of crime [~~in this state~~]; and

22 (4) an attorney who has clearly demonstrated
23 management or executive experience.

24 C. The chief [~~shall serve at the pleasure of the~~
25 ~~governor~~] may be removed by the commission only for

1 incompetence, neglect of duty or malfeasance in office;
 2 provided, however, that no removal shall be made without
 3 notice of hearing and an opportunity to be heard having been
 4 first given to the chief. "

5 Section 8. Section 31-15-5 NMSA 1978 (being Laws 1978,
 6 Chapter 14, Section 1) is amended to read:

7 "31-15-5. PUBLIC DEFENDER DEPARTMENT-- CREATION--
 8 ADMINISTRATION-- FINANCE. --

9 A. ~~[There is created]~~ The "public defender
 10 department" is created as an adjunct agency of the executive
 11 branch. The headquarters of the department shall be
 12 maintained at Santa Fe. The chief shall be the administrative
 13 head of the department. ~~[The department is administratively~~
 14 ~~attached to the criminal justice department.]~~ The commission
 15 shall oversee the department and provide guidance to the
 16 chief.

17 B. All salaries and other expenses of the
 18 department shall be paid by warrants of the secretary of
 19 finance and administration, supported by vouchers signed by
 20 the chief or ~~[his]~~ the chief's authorized representative and
 21 in accordance with budgets approved by the state budget
 22 division of the department of finance and administration. "

23 Section 9. Section 31-15-7 NMSA 1978 (being Laws 1973,
 24 Chapter 156, Section 7, as amended) is amended to read:

25 "31-15-7. CHIEF PUBLIC DEFENDER-- GENERAL DUTIES AND

1 POWERS. --

2 A. The chief is responsible to the [~~governor~~]
3 commission for the operation of the department. It is [~~his~~]
4 the chief's duty to manage all operations of the department
5 and to:

6 (1) administer and carry out the provisions
7 of the Public Defender Act with which [~~he~~] the chief is
8 charged; and

9 (2) exercise authority over and provide
10 general supervision of employees of the department.

11 B. To perform [~~his~~] the chief's duties, the chief
12 has every power implied as necessary for that purpose, those
13 powers expressly enumerated in the Public Defender Act or
14 other laws and full power and authority to:

15 (1) exercise general supervisory authority
16 over all employees of the department subject to the Personnel
17 Act;

18 (2) delegate authority to subordinates as
19 [~~he~~] the chief deems necessary and appropriate;

20 (3) within the limitations of applicable
21 appropriations and applicable laws, employ and fix the
22 compensation of those persons necessary to discharge [~~his~~] the
23 chief's duties;

24 (4) organize the department into those units
25 [~~he~~] the chief deems necessary and appropriate to carry out

1 ~~[his]~~ the chief's duties;

2 (5) conduct research and studies that will
3 improve the operation of the department and the administration
4 of the Public Defender Act;

5 (6) provide courses of instruction and
6 practical training for employees of the department that will
7 improve the operation of the department and the administration
8 of the Public Defender Act;

9 (7) purchase or lease personal property and
10 lease real property for the use of the department;

11 (8) maintain records and statistical data
12 that reflect the operation and administration of the
13 department;

14 (9) submit an annual report and budget
15 covering the operation of the department together with
16 appropriate recommendations to the ~~[governor, secretary of~~
17 ~~corrections]~~ commission and, upon approval by the commission,
18 to the legislature and the governor;

19 (10) serve as defense counsel under the
20 Public Defender Act as necessary and appropriate;

21 (11) formulate a fee schedule for attorneys
22 who are not employees of the department who serve as counsel
23 for indigent persons under the Public Defender Act;

24 (12) adopt a standard to determine indigency;

25 (13) provide for the collection of

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1 reimbursement from each person who has received legal
2 representation or another benefit under the Public Defender
3 Act after a determination is made that ~~he~~ the person was not
4 indigent according to the standard for indigency adopted by
5 the department. Any amounts recovered shall be paid to the
6 state treasurer for credit to the general fund;

7 (14) require each person who desires legal
8 representation or another benefit under the Public Defender
9 Act to enter into a contract with the department agreeing to
10 reimburse the department if a determination is made that ~~he~~
11 the person was not indigent according to the standard for
12 indigency adopted by the department; and

13 (15) certify contracts and expenditures for
14 litigation expenses, including contracts and expenditures for
15 professional and nonprofessional experts, investigators and
16 witness fees, but not including attorney contracts, pursuant
17 to the provisions of the Procurement Code [~~Section 13-1-98~~
18 ~~NMSA 1978~~]. "

19 Section 10. Section 9-3-1 NMSA 1978 (being Laws 1977,
20 Chapter 257, Section 1, as amended) is amended to read:

21 "9-3-1. SHORT TITLE. -- [~~Sections 9-3-1 through 9-3-12~~]
22 Chapter 9, Article 3 NMSA 1978 may be cited as the
23 "Corrections Department Act". "

24 Section 11. Section 9-3-11 NMSA 1978 (being Laws 1977,
25 Chapter 257, Section 12) is amended to read:

1 "9-3-11. ADMINISTRATIVE ATTACHMENT. --

2 A. The following entities are administratively
3 attached to the corrections department:

4 (1) the adult parole board; and

5 (2) the governor's organized crime prevention
6 commission [~~and~~

7 ~~(3) the public defender department~~].

8 B. All powers and duties vested in the entities
9 enumerated in this section shall remain unamended by the
10 provisions of the [~~Criminal Justice~~] Corrections Department
11 Act. "

12 Section 12. TEMPORARY PROVISION. --The chief public
13 defender serving on June 30, 2009 shall continue serving until
14 a chief public defender is appointed by the public defender
15 commission, but shall not serve after January 1, 2010.

16 Nothing in this act prohibits the public defender commission
17 from reappointing the chief public defender serving on June
18 30, 2009.

19 Section 13. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2009.